IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-317

SHELL OIL COMPANY,

Petitioner,

versus

MARY OLSEN, ARGONAUT INSURANCE COMPANY, CHRISTINE W. CARVIN, and GORDON DAVIS WALLACE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS

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BRIEF FOR RESPONDENTS

The respondents, Mary Olsen, Christine W. Garvin, and Gordon Davis Wallace, respectfully respond to the petition for certiorari of Shell Oil Company as requested by the Court:

First, the Fifth Circuit followed the Louisiana land law to the letter, as Congress proclaimed, and this Court ordered it to do.

Second, the casualty occurred in 1970, suit had to be filed before the 1972 amendments (because of a one year period of limitation); accordingly the case has nothing to do with the Longshoreman's Act and Amendments of 1972.

Third, Shell has no quarrel with the proclamation or application of the Louisiana land law, but merely its effect. Shell's dislike of the effect of law properly proclaimed and applied addresses itself to Congress, not this Court.

Sierecki was created by the Court and killed by Congress.

If Congress wants to protect platform owners from any species of strict liability or wanted to do so, there were simple words to do so.

Fourth, Shell's analogy of the *Sierecki* cases and the 905B cases is just that, an argument to be put to Congress.

Fifth, regardless of whether the platforms are artificial islands or tantamount to enclaves on shore, under Louisiana law they are real buildings and the doghouse (the living quarters) and its accessories were a part

thereof because among other things they were welded fast to the platform.

Sixth, the same result would obtain in territorial waters or upland Louisiana. That is the way this Court says it should be.

Seventh, this Court made it plain in *Rodrique* that in no sense of the word were these platforms imaginary vessels; we had the benevolence of the Sea Law taken from us; now Shell only wants a rose without a thorn when it runs into a very limited, narrow species of strict liability. It is ready to go back to Sea Law now for this case.

Eighth, the ways there could be *Sierecki* unseaworthiness were virtually infinite, operational unseaworthiness, instantaneous unseaworthiness, shoreside unseaworthiness, unseaworthiness from a hand spilling a drop of oil. In this case very demanding, strict and narrow requirements are necessary.

Nineth, Shell informs the Court that the Louisiana Supreme Court contrived and wanted to obtain a favorable judgment for plaintiff as if its judgment were perverse. We do not believe this Court wants us to respond to that. The Louisiana Court simply indicated that appurtenances owned by one person and a building owned by another would not thwart the appurtenance doctrine where injured third parties were concerned. The doghouse and the heater were appurte-

nances or accessories of the platform, the building, just as a chimney would be to a home; and the Louisiana Supreme Court simply held that if the chimney fell and crushed a by-passer, it was no defense to the home-owner that the title to the chimney was in another, The You-Rent-a-Chimney Company.

Tenth, the Louisiana Court expressly considered this Court's reference to artificial islands and enclaves and found them simply directives as the jurisdiction and applicable law; the fact they are artificial islands for some purposes or all purposes does not keep them from being real buildings for real purposes.

The word building was considered from the time of French translations; and cases were found that declared all rigs buildings; wharves buildings; and other commercial or industrial constructions, non-inhabitable, buildings. The Fifth Circuit has referred to the platform as buildings for years and Shell has not seen fit to complain.

Last, if there must be analogy, these men analogize not to a longshore gang but to ship's crew still entitled to the warranty, a species of strict liability.

Everything Shell says in its petition may be true, we do not have to argue that, but still Shell's argument addresses Congress; when we do not like the effect of a law properly proclaimed and applied, we write our Senator; the phalanx of lobbyists of Shell can adequately do that.

And to repeat, since the accident happened, as Shell's petition points out, on May 6, 1970 and the complaint had to be filed under state law within one year, the case has nothing to do with 905B suits nor the demise of *Sierecki*. If Congress wants negligence and nothing but negligence to apply to platform liability, it can easily say so.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of November, 1979, three copies of the Response were mailed, postage prepaid, to John O. Charrier, Jr., Esq., 225 Baronne Street, 28th Floor, New Orleans, Louisiana 70112, Counsel for Shell, one to W. K. Christovich, Esq., 1815 American Bank Building, New Orleans, Louisiana 70130, counsel for Movible; and to Joel L. Borrello, Esq., 4500 One Shell Square, New Orleans, Louisiana 70139, Counsel for Argonaut. I further certify that all parties required to be served have been served.

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